Amendments to the Drawings

The attached drawing sheet includes changes to the drawing sheets and figures as follows:

On the originally filed drawing sheets 1-3, the header and footer have been removed, along with extraneous descriptors and labels (see Annotated Drawing Sheets Showing Changes).

On original drawing sheet 2/3, the four separate figures have been renumbered as 2A, 2B, 2C and 2D, and the label "Fig. 2" removed from the bottom right side of the new drawing sheet.

Attachment: Replacement Drawing Sheets
Annotated Drawing Sheet Showing Changes

REMARKS

The Official Action of July 18, 2007, and the prior art cited and relied upon therein have been carefully studied. The claims in the application are now claims 1-13, and these claims define patentable subject matter warranting their allowance. Favorable reconsideration and such allowance are respectfully urged.

Claims 12 and 13 have been added. Claims 1-13 remain in the application for consideration.

In response to the Examiner's objection to the drawings, Applicant has amended Fig. 2 to separately provide for Figs. 2A, 2B, 2C and 2D, as required by the Examiner. Applicant respectfully submits that this objection has now been overcome.

Applicant thanks the Examiner for her indication that claims 2-8, 10 and 11 would be allowable subject to being rewritten in independent form.

The Examiner has further rejected claims 1 and 9 under 35 U.S.C. §102(b) as being anticipated by Thornley '550. Applicant respectfully traverses this rejection as applied to claims 1 and 9, as originally presented or to new independent claims 12 and 13.

The Examiner maintains that claims 1 and 9 are anticipated by Thornley '550. Applicant respectfully

disagrees with the Examiner's reasons for the relevance of Thornley on the following basis.

Thornley discloses techniques for the formation of a foundation structure involving digging a borehole in the ground and installing a steel column (86) which is lowered into wet concrete (page 6, lines 72-75). The provision of a derrick rig (shown in Figs. 1 and 2) facilitates the process of digging the borehole and lowering the sections of the column.

Applicant respectfully submits that there is no discussion or suggestion in Thornley of a tool as defined by claim 1 which comprises upper and lower positioning means, i.e. means which serve to position or guide an element at upper and lower levels as that element is lowered into the ground. Whilst this document does disclose the lowering of an element such as the steel column (86), or the sections thereof, into the ground, there is no discussion about the potential need to adjust the plan position of the steel column, for example, to ensure that the verticality of that column is correct.

The Examiner asserts that a number of features shown in Fig. 10 of Thornley correspond to features required by claim 1 and , therefore, that both claims 1 and 9 are not novel. Specifically, the Examiner considers the horizontal

bar (95) to be an "upper positioning means", the part (88), which would appear to lack reference in the description, to be a "lower positioning means" and the light shell (89) to be a "variable length connection" between the two.

Firstly, Applicant submits that the identified features do not constitute inter-related parts of an apparatus which may reasonably be considered as cooperating with each other to fulfill a common function, i.e. to position an element in a borehole. Review of Thornley indicates that these parts do not physically cooperate in any way and are essentially involved at different stages of the method described in Thornley and for different purposes. Indeed, the horizontal bar (95) forms part of the resultant superstructure of the building under construction, while the part (88) would appear to be a "splicing plate" (similar to part 94 described at page 7, line 55 to 57) for attaching the column to the circular base plate (87) and will therefore remain in the ground as part of the foundation structure. Neither the bar (95) nor the plate (88) can be operated to adjust the position of the steel column. Indeed, the points of connection defined by these parts will be fixed and non-adjustable. Moreover, it should be noted that the light shell (89) is placed in the hole after the steel column (equivalent to the "element" of claim 1) has been placed (see the text at page 6, lines 114 to

117) and is dispensed with following the final concreting phase (see page 7, line 74 to 77). Accordingly, shell (89) does not constitute a "variable length connection" between upper and lower positioning means of an apparatus for positioning an element in a borehole.

Finally, Applicant submits that the present independent claims are not merely directed to the installation of an element in a borehole. Rather, they define an apparatus/method capable of positioning an element, and reply upon the provision of upper and lower positioning means which serve, in use, to adjust the plan position of the element. Thornley contains no discussion of the problem adjusting the position of an element that is to be installed in the ground and instead relates, more generally, to the problem of digging and installing (c.f. positioning) an element in the ground. As such, Applicant submits that Thornley would not provide the skilled person with any teaching or information which would assist him in solving the problem of accurately adjusting the plan position of an element at upper and lower levels.

The prior art documents made of record and not relied upon have been noted along with the implication that such documents are deemed by the PTO to be insufficiently pertinent to warrant their applications against any of applicant's claims.

Favorable reconsideration and allowance are earnestly solicited.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By 
Norman J. Latker
Registration No. 19,963

NJL:ma
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
G:\BN\H\Hasl\Shotton5\pto\2007-11-16-Amendment.doc